11-14-1979

The Advocate, November 14, 1979

The Advocate

STUDENT NEWSPAPER OF THE NATIONAL LAW CENTER
THE GEORGE WASHINGTON UNIVERSITY

Vol. 11, No. 5 **November 14, 1979**

Res Ipsa Run

by Bob Gallop

On a brilliantly sunny and crisp fall morning, against a backdrop of the turning leaves of autumn and the U.S. Capitol, a day that exists only in a Norman Rockwell painting, the law school's "Res Ipsa Loquitur" 3- and 6-mile run was held at Haines Point. Twelve people each ran i both the 3- and 6-mile race. Jon Peterson had the top time in the 3-mile run for the men: his time was 19:37. The top woman finisher in the 3-mile run was Kay Bushman with a time of 26:31. Bob Radler was the top finisher in the 6-mile run, finishing with a time of 38:18. Laura Van Etten, with a time of 52:48, was the top female finisher in the longer race. The top finishers received gift certificates for their efforts.

SBA Reports

by Sue Bastress

As the semester draws to a close, I reflect on the accomplishments of the present SBA administration, while looking forward to new initiatives to be taken on in February by the 1980-81 SBA Assembly. A full discussion of election and campaign plans will be provided in the January "Advocate" issue, but I felt that some attention to current projects and priorities is warranted now to set the stage for next semester.

At the last SBA meeting of October 25th, the SBA passed a resolution supporting the national boycott of Nestle's products. Beth Brown, the resolution sponsor, will be posting notices to this effect on the vending machines within the next few days. The Book Exchange will be continued next year by three SBA representatives who will take over from Sue Kelley and Sol Goldman. Dave Orshefsky is planning to prepare a course directory with the objective of distinguishing each professor's approach to course material. The need for a men's lounge will be taken up with Dean Potts. Also decided was that due to exams ending late in December, no "Thank God It's Over" (TGIO) party will be given. The SBA party of October 15th will suffice as the semester party.

In terms of long-term projects which will necessarily be carried into the term of the next SBA administration, I believe that providing input to the future planning of the Law School through the Self-Study Committee, Space Needs Committee, Faculty Tenure Committee and Curriculum Committee merit top priority. Student opinions concerning improvements to the overall physical plant, as well as improvements in services, governance, student/faculty relations and curriculum, are being actively solicited by the Dean as an integral part of his decision-making process. At this time in Dean Barron's Administration, the students have an unprecedented opportunity to help shape the future direction of the Law Center.

Other SBA priorities include the production of a draft Honor Code, a revised Constituion, and a survey of placement services offered at top law schools. A law school student directory will be published and faculty evaluations will be improved.

Because of the level of student support demonstrated this semester in providing sports events, parties, lectures and seminar series, and special programs, in addition to active student representation on Faculty Committees, I am hopeful that the SBA will continue to vigorously represent student interests and work with Dean Barron in keeping the Law School environment responsive to student needs.

A Comment on Questionnaire Responses

by John Lambert

The results of the student questionnaire run in this issue of The Advocate are part of the school's self study for the ABA accreditation committee. The survey was administered by the SBA, not the Advocate. Unfortunately, we were unable to include the breakdown of answers by class.

The questions attempted to cover four general areas: basic data, that is facts of almost a biographical nature, the students' perception of the law school, student employment practices, and the nature of their career goals, assuming they have some.

The Advocate thought it might highlight a few areas and articulate a few of the more obvious conclusions which can be drawn in a very cursory manner. Before doing so, (and despite our lack of training in the social sciences), some factual responses should be noted. About 880 students answered the questionnaire and this is roughly half the school. Three-quarters of those who answered are day students and this is consistent, again roughly speaking, with the proportion of day and night students here at the NLC. Also, 167 of those who answered were post J.D. students.

In examining the responses, the first curiosity comes with question 7; the number of students who are in law school so that they may eventually practice law, 57%. It is unfortunate that income was not specifically included as one of the possible answers. Surely, for some, that must have been the prime motivator, much as no one likes to admit it. However, if one looks at question 12, the answers indicate that for only 12% of the students is a lawyer's income the most enthusiastically awaited reward after law school. But what's a lawyer make? Juxtaposed to these honest 107 individuals, are the respondents, 75% (again #12) of whom look forward to the more altruistic qualities of the profession:- helping people, problem solving, and policy work or leadership. This high percentage of nobly inspired would appear to be borne out by the extensive activity in the clinical programs here at the NLC where students often make large sacrifices of their time. It speaks very well for the NLC if it is true that 75%of the students are somewhat altruistically motivated.

Another of the more obvious conclusions may be drawn from question 16. While the percentage who will stay here in D.C., 28%, is not surprising, the fact that over 70% are going elsewhere confirms the idea that the NLC is a national law school. If this is true, it would seem worthwhile to alter our curriculum to acknowledge this national dimension. Two examples of the curriculum's present failure would be the fact that both Equity and Community Property are taught in the summers, Community Property every other summer.

Equity, as a subject, is now on 35 bar exams. Potentially, Equity could be one of the more philosophical legal courses which undermines the contention that the school should not cater to the requirements of bar exams. The importance of Community Property in a society as mobile as ours cannot be underestimated. Even the attorney, way up in Vermont or Maine can stumble across the need for some Community Property knowledge.

Question 28 deals with employment during the school year, a sensitive area for upper class students, and it is difficult to draw any conclusions. Unfortunately, it cannot be determined from the results how many of the respondents are night students who may and probably do work more than 20 hours per week. (The ABA requires that no full time student (basically a day student) work more than fifteen hours a week). Looking at the responses of the 2nd, 3rd, and 4th year students, at least 229 students may work up to 20 hours or more. The figure seems low but there is really no way of finding out.

Another significant point surfaces in question 32. 85% of the respondents talk about law on an informal basis less than four hours a week, which should seem low. This actually is not terribly surprising but is still noteworthy. There are times in various classes when one can sense an overtly anti-intellectual sentiment: when there is a visible sense that someone who asks a question is an annoyance.

One of the more puzzling responses comes with questions 36 and 37. 58% of the first year students and 61% cumulatively, do not have enough time to thoroughly prepare for class. Yet 67% cumulatively do have enough time for exam review. Why the difference? Shouldn't review take a lot more time? And according to question 27, 52% study under 20 hours a week.

Three possible conclusions can explain why a student who has 14 hours a week of classes, and works 20 outside, can only spend, at most, 20 hours a week preparing for class leaving him unprepared. Either the student is commuting from L.A., he is writing the great American novel, at long last, or he is watching an awful lot of T.V.

With the notable exceptions of library services(78), the Legal Research and Writing Course (80), the school's use of the University (85) and academic advising, students seem generally content with the NLC.

Advocate Publication Schedule

This is the last issue of The Advocate this fall.
Publication dates for next semester are
January 23
February 6
February 20
March 12
April 9
The Advocate deadline is the Friday before publication, 6:00 P.M.

Sit Tight

The events of the last ten days which, unfortunately, may well continue indefinitely, are infuriating and frustrating. That a regime would not only countenance the takeover of an embassy, but actively encourage it, seems incomprehensible. Again the United States has been cast as the anti-Christ, who continues to oppress and undermine the valves of others: the latest misdeed being the harboring of the Shah. So why wasn't the Mexican embassy seized, or something which belonged to the Bahamas or even the Egyptians.

This inconsistency, that other counntries who harbored a healthy Shah were not assaulted while the U.S. has been, is one of many which help to point out the real danger present in any dealings with Iran. Iran is a religiously motivated country led by a "religious" leader. Religion not in the sense of good or evil, but in the sense of fanatical devotion and worse yet, a strong conviction in the existence of a hereafter in some form. The combination of these two strong beliefs, its fervor which makes any means justified, results in a complete divorce of rationality from any of the actions taken.

Dealing and being confronted with this unwavering self-righteousness is exasperating for any western nation and particularily for the United States. Religion simply does not play a significant political role in the United States and instances of intense religiosity, such as Jonestown, leave us bewildered. We have little exposure to people who are this absorbed by a single ideal, a "higher" inspiration which prevents them from negotiating or any other form of compromise. When there is an interchange of this sort, a greater degree of patience and tolerance are demanded of us.

This patience must manifest itself in all sectors of our society: political, business, and especially with the schools. The students are traditionally one of the first groups to respond, and in most situations this is healthy. Here it is not.

No one contests the right of the students to respond to either the seizure or the American-based Iranian demonstrations. But in this context, the purpose of the demonstration must be seriously considered. Demonstrations motivated by hate are ugly and definitely not beneficial. More importantly they could provoke a leader, who is at best unpredictable, into retalitory action for which all demonstrators would have to shoulder responsibility.

Perhaps the worse part of the takeover, provided the hostages return safely, is the witch-hunt mentality which is beginning to surface in some students. Not only in Denver, but even NLC students run after and throw things at Iranians. Besides bringing back bad thoughts of the Russian pograms, this sort of hostility could prove to actually fuel the Iranians fervor. The Roman persecutions of the early Christians proved to be the real catalyst for the growth of Christianity. Persecution here could easily have a similar effect. Every religion needs a martyr.

Rather than offering the Iranians self-fulfillment through overt displays of prejudice and persecution, the students should sit tight. Take the sting out of the Iranians actions through a non-response. Be condescending as hell. Yessir 'em to death.

The Advocate

Basement, Bacon Hall
2000 H Street, N.W.
Washington, D.C. 20052
Tel. (202) 676-7325

JOHN LAMBERT
Editor-in-Chief

Bill Lieth
Executive Editor

Jeffery Berry
Business Manager

John Seibel
Features Editor

Jim Sweeney
Arts Editor

Staff: **David Bane, Harry Chernoff, Bob Gallop, Sheeley Goldfarb, Jim Heller, Michael McDonald, Will Schaldt.**

Contributors: **Dean Jerome Barron, Sue Bastress, David Brandolph, Chris Bratner, Carl Gold, Joan Hodge, Wayne Kennard, Scott A. Smeal.**

The opinions expressed herein are not necessarily those of the Advocate Editorial Board, the National Law Center, or George Washington University.

A Patent Law Student's Perspective

by Wayne M. Kennard

...What is Claimed is:
1. A toothbrush comprising:
a. a handle,
b. two bristle carriers pivotally mounted on the handle and rotatable between an aligned position in which they are substantially perpendicular to the handle and a parallel position in which they are substantially parallel to the handle...

The foregoing is just one portion of a Claim in a U.S. Patent. A U.S. Patent consists of various parts. The parts are an Abstract, Background of the Invention, Summary of the Invention, Drawings, Detailed Description of the Drawings, and the Claims.

Each of these component parts has a purpose:
Abstract - a brief description of the invention.
Background of the INVENTION — A SUMMARY OF THE PREVIOUS INVENTIONS AND ADVANCES IN THE PARTICULAR FIELD OF INVENTION.
Summary of Invention - a summary of what the inventor perceives his or her knowledge will ad to public knowledge.
Drawings - a single or series of drawings which give a pictoral or graphic representation of the invention.
Detailed Description of the Drawings - describes in detail the numbered drawings.
Claims - these describe the notes and bounds of the property right of the invention for which the inventor is granted a 17 year monopoly.

This form of writing is what the patent law student first learns to understand and second to produce to describe a "novel" and "unobvious" invention.

There is a small group of students at the National Law Center (NLC) whose main purpose for entering law school was to become a Patent Attorney. These students when designated as such will be able to bridge the gap between "law and technology". These students do not have the traditional backgrounds for law. Their undergraduate and graduate degrees are in disciplines such as electrical, mechanical, chemical or other engineering or the various "hard" sciences such as applied science or physics.

These students wish to enter the field of law but yet retain close contact with the world of technology.

Under the guidance of Profs. Irving Kayton and Glen E. Weston, the NLC has one of the premier curriculum in Intellectual Property. (Intellectual Property encompasses Patents, Trademarks, Copyrights and Trade Secrets.)

Beyond the classroom the NLC patent law student has access to the U.S. Patent and Trademark Office in Crystal City, Arlington, Va. The U.S. Patent and Trademark office is the hub of all patent activity. Additionally, the Washington area has the largest concentration of Patent Law firms and corporate patent divisions in the country.

This unique situation affords the NLC patent law student a tremendous opportunity to gain practical knowledge of the inner workings of the patent, trademark and Copyright systems. The way to avail himself or herself of this opportunity is to clerk for one of the law firms or be hired by a corporate patent division. (Some corporate patent divisions have patent attorney training programs where the student works full time and is enrolled in the NLC night division.)

The real value of clerking for a firm or corporate patent division involved in patent prosecution is the "first hand" experience in the practice of patent law. However, this could be done at any patent law firm in any city in the country. By clerking in the Washington area the NLC patent law student learns what the practice of patent law is "before the U.S. Patent and Trademark Office". This is a "golden opportunity" the NLC patent law student should not pass up.

The term "patent prosecution" has a totally different meaning than "prosecution" in the traditional legal sense. "Patent prosecution" is a term of the art which means the obtaining of a U.S. Patent for a "novel" and "unobvious" invention. The main thrust of patent prosecution is the action between the patent attorney representing the inventor and the U.S. Patent and Trademark Office. When done properly, this prosecution will result in the issuance of a valid U.S. Patent.

Patent prosecution is the basic element of patent law. The NLC patent student's role in this prosecution can be significant. A successful clerk can thus gain the unique tools of the "patent law trade" that can be only attained in the Washington area.

Many events take place between the presentation of an invention to a patent attorney and the issuance of a valid patent by the U.S. Patent and Trademark Office. In each phase the NLC patent law student can have part. The participation in each phase is commensurate to knowledge and experience in patent law. The theoretical knowledge is learned in the classroom but the practical is learned by clerking.

The phase of prosecution, in which the clerk initially experiences varies according to the firm. More often than not it will begin with learning the techniques of "searching". Searching is nothing more than physically reading through issued U.S. Patents, foreign patents and printed publication in the U.S. Patent and Trademark office in the technological area in which the invention lies. This is to determine if the subject matter of the present invention has been previously described and thus invented; or if someone has an invention that is so close to the present invention that it might preclude the inventor from gaining a U.S. Patent.

Sounds easy! In some cases it is. In most cases it is not. It generally requires a good deal of thought and analysis to determine which issued patents (foreign or domestic) or printed publications apply to the invention. From the references found by the "searcher", the patent attorney will write the patent application avoiding any infringement of the references. As a "searcher", the patent law student comes to the realization that the quality of his or her search will have a direct bearing on the rest of the patent prosecution.

The next phase of prosecution that the patent law student is introduced to is the drafting of "amendments" to applications. When an application is filed in the U.S. Patent and Trademark Office it is examined to determine if the disclosure and claims of the application infringe on the patent rights of an issued patent (foreign or domestic). If it does, the application is sent back to the patent attorney where the application can be amended to avoid the infringement of the rights of other patents.

The patent law student may not necessarily actually write the amendments but he or she will have an opportunity to study the form and technique of amendment drafting.

In conjunction with amendments the patent student can be present during attorney interviews with the Patent Office Examiner who is assigned to a particular case. This is a splendid opportunity to see a patent attorney argue the merits of patentability of an invention.

The final phase the patent law student is introduced to is the actual drafting of the application. To do this well it takes skill and practice. A well-written patent application is a true form of art. This is the greatest challenge of patent prosecution.

Beyond this point, patent prosecution follows the more traditional forms of law. The Appeals that are taken before the U.S. Patent and Trademark Office Board of Appeals and the Court of Customs and Patent Appeals require the clerk to prepare briefs, memos, opinion letters, etc.

The NLC patent law student may get to participate in all phases of patent prosecution. If not directly, most assured, the student will have an indirect participation. The student "will see" every facet of patent prosecution. He or she can develop and hone their patent law skills.

The patent law student may experience training in the other areas of Intellectual Property, that is Trademarks and Copyrights.

The patent law student is able to advance other legal skills such as client contact.

This brings us to the reason for clerking or working for a corporate patent division. A normal law student upon completion of law school will take the bar in the state of his or her choice. This also applies to the law student specializing in patent law. However, to become a patent attorney and be able to practice before the U.S. Patent and Trademark Office, an attorney must also pass a "Patent Bar Examination."

This is where the clerking or

continued on page nine

Placement, Placement

The Placement Office recently submitted a report concerning the 1978 graduates to the National Association of Law Placement. The report included 409 graduates from the classes of September 1977, February 1978 and May 1978. There were 301 who reported their positions, 5 who were not seeking employment and 14 who are still available. Unfortunately, we still have 88 graduates who have not responded to any of our questionnaires and whose employment status is thus unknown. In this regard, we urgently request all 1979 graduates to let us know your employment status upon graduation. We will be sending out questionnaires to the May 1979 graduates later this Spring and hope to hear from those employed as well as those graduates who will not be actively looking and those who are seeking employment. The results of the mailing are not identified by students' names. Your help in this difficult task of tracking down several hundred graduates will definitely be appreciated.

The types of positions obtained by the 1978 graduates are as follows: private practice 122; government (federal-legal) 68; government (state and local-legal) 9; government (non-legal) 5; corporations (legal) 13; corporations (non-legal) 2; indigent legal services 5; public interest 7; judicial clerkships (federal) 17; judicial clerkships (state and local) 10; bank 1; accounting firms 3; military (legal) 7; academic communities (legal) 2; academic communities (non-legal) 3; trade associations 4.

Of those graduates who reported their positions, 215 located in the Northeast region; 26 in the Great Lakes and Plains region; 19 in the Southeast region; and 19 in the West and Southwest region. The geographic status of the employed 1978 graduates is as follows: Washington, D.C. 163; New York 24; Virginia 11; Pennsylvania 4; Ohio 7; Illinois 7; Maryland 11; California 5; Missouri 4; New Jersey 3; Connecticut 3; Florida 3; Massachusetts 4; Texas 3. One graduate located in each of the following states: Alabama, Arizona, Colorado, Hawaii, Idaho, Iowa, Louisiana, Maine, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Rhode Island, South Carolina, Utah, Washington, and Wisconsin.

Client Counseling Competition

by David Brandolph

For all of you who complain that the George Washington University Law School curriculum offers inadequate practical experience, ABA/LSD comes to the rescue with the 1980 Client Counseling Competition and the 1980 Volunteer Income Tax Assistance Program.

The Client Counseling Competition gives a two-member team of law students the opportunity to confront a client in a law office situation before a panel of judges. The student attorneys are judged on their ability to elicit information from the client, deal with the client on a personal basis, advise the client adequately while dealing with the relevant moral and legal issues, and are judged on numerous additional subjective criteria. The intraschool competition will be held in February, with the two winning teams advancing to the Regionals on March 8, 1980. The National Competition will be held in Macon, Georgia on March 28-29, 1980. There exists the possibility that the regional winners will receive a cash prize of $500 per team.

While over 120 schools competed last year, this year will be the first for George Washington University. The application deadline for participating schools is November 30th. Consequently, we must know immediately how many students are interested in the competition. A sign-up sheet will be located on the second floor staircase landing in Stockton and on the SBA Bulletin Board on the second floor corridor in Stockton until November 26. More information will also be placed at these locations.

The Volunteer Income Tax Assistance Program (VITA) will also be launched this January. Students will be trained by the Internal Revenue Service to aid poor and elderly clients complete their income tax returns. A sign-up sheet will be posted along with the Client Counseling sign-up sheets. All law students are eligible for both Client Counseling and VITA.

Law Revue Note

by Carl Gold

For the theater major who needed a job...or the basketball star who's sorry he gave up on his tap dance class...here's the big chance for each and every one of you to do your own little song and dance. And you won't have to wait until some client asks you how you managed to forget about the statute of limitations. Because...preparations are now under way for the Second Annual Law Revue. Yes, if you can't put up with your fellow students or your professors, here's the opportunity to get up on stage and put them down. (all in jest, of course). We need *you* to help us repeat and surpass our success of last year. All we need are singers, dancers, actors, comedians, and technical people. We'll even consider juggling seals or trained judges, if they show valid GW ID cards. Prerequisites include a little talent, a lot of desire, and the ability to have fun. Not necessarily in that order.

So, even if the biggest joke you've ever pulled was your first year oral argument, and you dance like Fred Astaire's gimpy brother, come to the tryouts for Law Revue. Auditions will take place in the Marvin Center, Room 405, at 7 P.M., on November 13th, 15th, and 16th. Callbacks will be in Room 410 on November 19th. Don't miss out on the fun (and remember, those who audition get the first crack at hearing this year's batch dancesteps. Guaranteed to get you thrown right out of the Laughingstock or Elan). Who knows...this might be your big break....

don't forget SBA

Jan. 3, 4, and 7. IN ROOM B-02 STOCKTON

Bring in your used textbooks and study aids to sell at the price you set (only texts in the current book lists, please).

-- buy used books at a price closer to what they're worth.

-- Sorry we can't be responsible for lost or ripped off books.

Dean's Corner

Recently the American Bar Association Section of Legal Education and Admissions to the Bar has been distributing to law schools across the country its Task Force Report on Lawyer Competency. I mentioned the report in my last column. The report is more commonly known as the Cramton Report after the name of its chairman Dean Roger Cramton of the Cornell Law School. The report is concededly addressed to the criticism that Chief Justice Burger and others have made of the legal profession on the question of lawyer competency. In my last column I mentioned that the Devitt report is also a response to the Chief Justice's criticism. There is a distinction between the two reports which is entirely consistent with their separate origins. The Devitt report, product, as it is, of the judicial conference, speaks in the language of mandatory requirements. The report addressed to the law schools speaks about Recommendations.

I shall discuss only one recommendation of the Cramton Report here.

> RECOMMENDATION 3
> Law schools should provide instruction in those fundamental skills critical to lawyer competence. In addition to being able to analyze legal problems and do legal research, a competent lawyer must be able effectively to write, communicate orally, gather facts, interview, counsel, and negotiate. Certain more specialized skills are also important for many law graduates.
>
> Law schools should provide every student at least one rigorous legal writing experience in each year of law study. They should provide all students instruction in such fundamental skills as: oral communication, interviewing, counselling, and negotiation. Law schools should also offer instruction in litigation skills to all students desiring it.

At the present time the Curriculum Committee, composed of faculty and students, is studying our first year legal writing program. Presently we offer legal writing for only one semester. Shortly after I became Dean I asked Max Pock, whose verbal skills are apparent to anyone who has been his student (I include myself among his students), to chair the Curriculum Committee and study our legal writing program. We are in an excellent position to be somewhat innovative in legal writing since we have seven teaching fellows on our staff who serve for two year terms. These teaching fellows come to us full of enthusiasm and undriven by any territorial imperatives. A fast read of Recommendation 3 in the Cramton Report will show that our own ongoing overview of legal writing is somewhat more modest than the suggested scope of the Cramton's committee recommendation on this point. The Cramton Report is talking about providing all students with a rigorous legal writing experience in each year of legal study. I think this last is an excellent recommendation. But I am somewhat skeptical about the availability of staff and other resources to implement it.

These matters I would like to stress are not abstract questions of pedagogy. There is a real struggle in the interplay of the Chief Justice's criticism, the Devitt Report and the Cramton Report. What is at stake really is the autonomy of the law schools. Two states, Indiana and South Carolina, have already begun to mandate the taking of specific courses in law school as part of the bar admissions process. Thus, in South Carolina bar applicants are now required to take both Evidence and Equity in law school. (Yes, Equity!) The hope which underlies the Cramton Report is that change on the part of the law schools if undertaken voluntarily will avert the threat of mandatory judicial interference in the law school curriculum. It is difficult as yet to predict what the ultimate aftermath of Chief Justic Burger's criticisms of the law school product will be.

I would like to state a note of regret. In all the discussion among law school deans and judges about the task of lawyer competency, there has been very little attention to the work of another jurisprude, Mr. Art Buchwald. In a penetrating column on the Burger criticisms on the competency of lawyers, Buchwald argues that society should fear the "good" lawyer and not the bad one. It is the good lawyers who know how to delay a case for several years, etc. In short once we teach our students legal writing, interviewing, counselling and negotiating, how do we also incorporate the transmission of values?

Jerome A. Barron

New Librarian

John Barclay Inge has joined the staff of the Law Library as Reference Librarian - Circulation/Multi-Media. Barclay, who received a B.A. from V.P.I. and an MLS from the University of South Carolina, comes to G.S. via the Richmond City Jail, where he was the library director. He brings to G.W. a wealth of knowledge concerning the penal system and criminal procedure, and will be a valuable asset to the Law Center. Barclay's office is located on the Third Floor in the Microform area.

Student Responses to

7. Most important reason you decided to study law – (877)

(1) Disliked job I had	33	3.7
(2) Wanted to practice	504	57.0
(3) Aid in job	73	8.3
(4) Public Office	42	4.8
(5) Other	230	26.0

8. Legal career you would most like – (880)

(1) Teach	30	3.4
(2) Practice	516	58.6
(3) Government	132	15.0
(4) Business	126	14.3
(5) Other	76	8.6

9. If you would like t practice, in what setting? – (821)

(1) Solo	53	6.5
(2) Small firm	420	51.1
(3) Large firm	131	16.0
(4) Government agency	137	16.7
(5) Corporation	90	11.0

10. Do you anticipate that your first job will be non-legal? – (874)

(1) Yes	103	11.8
(2) No	768	87.9

11. Size of city where you plan to work (In thousands) – (865)

(1) Under 25,000	32	3.7
(2) 26,000 – 100,000	87	10.1
(3) 101,000 – 500,000	121	14.0
(4) 501,000 – 1,000,000	265	30.6
(5) Over 1,000,000	361	41.7

12. Aspect of legal career you most look forward to – (870)

(1) Lawyer's income	107	12.3
(2) Professional status	109	12.5
(3) Helping people	192	22.1
(4) Problem solving	247	28.4
(5) Policy work, leadership	212	24.4

13. Four 1980 graduates, how definite are your first job arrangements now – (283)

(1) Definite	52	18.4
Quite definite		14.5
(3) Indefinite	187	66.1

14. Importance of law school grades for your career – (876)

(1) Important	407	46.5
(2) Moderately important	353	40.3
(3) Unimportant	114	13.0

15. Where do you plan to take the bar exam? – (867)

(1) Washington, D.C.	177	20.4
(2) Another state	156	18.0
(3) Washington, D.C. and another	265	30.6
(4) Uncertain	187	21.6
(5) Will not take bar	19	2.2

16. In what state will you pursue your career? – (881)

(1) Washington, D.C.	248	28.1
(2) Home state	173	19.6
(3) Other	108	12.3
(4) Uncertain	352	40.0

26. Attending classes (Hours spent) (882)

(1) 1-5	24	2.7
(2) 6-10	218	24.7
(3) 11-13	176	20.0
(4) 14-16	452	51.2
(5) Over 16	12	1.4

27. Studying for classes – (881)

(1) 1-5	44	5.0
(2) 6-15	211	24.0
(3) 16-20	231	26.2
(4) 21-30	236	26.8
(5) Over 30	159	18.0

28. Employment – (881)

(1) None	354	40.2
(2) 1-5	20	2.3
(3) 6-10	56	6.4
(4) 11-20	217	24.6
(5) Over 20	233	26.4

29. Law Review – (862)

(1) None	782	90.7
(2) 1-5	32	3.7
(3) 6-10	26	3.0
(4) 11-20	9	1.0
(5) Over 20	12	1.4

30. Clinics – (862)

(1) None	652	75.6
(2) 1-5	35	4.1
(3) 6-10	44	5.1
(4) 11-20	23	2.7
(5) Over 20	7	.8

31. Other Student Activity – (813)

(1) 1-2	626	77.0
(2) 3-4	96	11.8
(3) 5-10	54	6.6
(4) 11-15	15	1.8
(5) Over 15	11	1.4

32. Informal discussion of law – (855)

(1) 1-2	444	51.9
(2) 3-4	284	33.2
(3) 5-10	97	11.3
(4) 11-15	13	1.5
(5) Over 15	15	1.8

33. Family time – (821)

(1) 1-2	357	43.5
(2) 3-4	92	11.2
(3) 5-10	141	17.2
(4) 11-15	54	6.6
(5) Over 15	176	21.4

34. Other non-legal activities – (844)

(1) 1-2	85	10.1
(2) 3-4	109	12.9
(3) 5-10	274	32.5
(4) 11-15	145	17.2
(5) Over 15	231	27.4

35. Travel: Job-school-home – (873)

(1) 1-2	196	22.5
(2) 3-4	189	21.6
(3) 5-10	368	42.2
(4) 11-15	89	10.2
(5) Over 15	31	3.6

Self-Study Questionnaire

36. Do you usually have enough time for minimal class preparation? – (807)

(1) Yes	807	91.4
(2) No	74	8.4

37. Do you usually have enough time for thorough class preparation? – (881)

(1) Yes	331	37.6
(2) No	545	61.9

38. Do you usually have enough time for review for examinations? – (726)

(1) Yes	488	67.2
(2) No	234	32.2

63. On balance, to what extent has employment helped or hurt your study of law? – (571)

(1) Helped a lot	148	25.9
(2) Helped some	239	41.9
(3) Hurt a lot	44	7.7
(4) Hurt some	138	24.2

70. Law classes are most useful when teachers insure that cases are related to – (805)

(1) The law of the District of Columbia	9	1.1
(2) Strategy in handling cases	493	61.2
(3) Procedures in conducting litigation	155	19.3
(4) Values of jurisprudence	146	18.1

72. My grades in law school are – (590)

(1) What I expected	190	32.2
(2) Better than expected	100	16.9
(3) Worse than expected	295	50.0

73. Grades – (566)

(1) Reflect the time I put in studying	271	47.9
(2) Are high compared to study time	86	15.2
(3) Are low compares to study time	203	35.9

74. Grading System – (593)

(1) I am satisfied	120	20.2
(2) I am somewhat satisfied	188	31.7
(3) I am very satisfied	18	3.0
(4) I am dissatisfied	270	45.5

75. I would prefer letter grades – (663)

(1) Yes	280	42.2
(2) No	372	56.1

76. I rate classroom teaching at GW Law – (84.)

(1) Unsatisfactory	68	8.1
(2) Fair	291	34.5
(3) Good	375	44.5
(4) Excellent	108	12.8

77. I rate the curriculum at GW Law School – (815)

(1) Unsatisfactory	35	4.3
(2) Fair	178	21.8
(3) Good	457	56.1
(4) Excellent	109	13.4

78. I rate library books and services at GW Law School – (830)

(1) Unsatisfactory	206	24.8
(2) Fair	301	36.3
(3) Good	279	33.6
(4) Excellent	43	5.2

79. I rate student activities at GW Law School – (754)

(1) Unsatisfactory	111	14.7
(2) Fair	389	51.6
(3) Good	230	30.5
(4) Excellent	23	3.1

80. I rate writing/research program at GW Law School – (792)

(1) Unsatisfactory	285	36.0
(2) Fair	304	38.4
(3) Good	176	22.2
(4) Excellent	27	3.4

81. I rate availability of faculty at GW Law School – (785)

(1) Unsatisfactory	53	6.8
(2) Fair	285	36.3
(3) Good	374	47.6
(4) Excellent	72	9.2

82. I rate availability of Deans at GW Law School – (650)

(1) Unsatisfactory	74	11.4
(2) Fair	250	38.5
(3) Good	261	40.2
(4) Excellent	65	10.0

83. I rate faculty at GW Law School – (797)

(1) Unsatisfactory	44	5.5
(2) Fair	249	31.2
(3) Good	410	51.4
(4) Excellent	94	11.8

84. I rate the law school's use of D.C. – (753)

(1) Unsatisfactory	146	19.4
(2) Fair	275	36.5
(3) Good	236	31.3
(4) Excellent	69	9.2

85. I rate the law school's use of the university – (649)

(1) Unsatisfactory	328	50.5
(2) Fair	270	41.6
(3) Good	89	13.7
(4) Excellent	12	1.8

86. I rate job placement at GW Law School – (550)

(1) Unsatisfactory	105	19.1
(2) Fair	182	33.1
(3) Good	214	38.9
(4) Excellent	47	8.5

87. I rate the clinical programs at GW Law School – (493)

(1) Unsatisfactory	16	3.2
(2) Fair	81	16.4
(3) Good	248	50.3
(4) Excellent	147	29.8

88. I rate academic advising at GW Law School – (585)

(1) Unsatisfactory	316	54.0
(2) Fair	187	32.0
(3) Good	80	13.7
(4) Excellent	11	1.9

The New Federal Criminal

by Scott A. Smeal

If politics is indeed the art of the possible, then the systematic overhaul of some 3000 criminal offenses and numerous procedures which have been enacted piecemeal over two centuries is not surprisingly a formidable task. But with the introduction on September 7th of this year of S.1722 (the Senate Judiciary Committee bill) and S.1723 (the House Subcommittee on Criminal Justice draft) another chapter opened in the 13-year-old attempt to reform and recodify the Federal criminal code.

Although 14, such bill shave been introduced since 1971, not until the 95th Congress did any receive floor action. Under the improbable joint leadership of Senators Kennedy and Thurmond, the Senate passed on January 30, 1978, after eight days of debate the Criminal Code Reform Act of 1978 (S.1437) by the convincing vote of 72-15. Both this Act and the House companion bill (H.R.6869) subsequently died in the House Judiciary Committee.

Underlying the complexity of this ambitious undertaking are an array of sensitive issues, including federalism, civil liberties, and sentencing, in addition to particular subjects such as obscenity law, sex offenses, and white-collar crime. (Two especially controversial issues, capital punishment and gun control, have been excluded however.)

Few would deny that criminal code revision is sorely needed. The piecemeal enactment of the current code has resulted in a virtual morass of criminal law: 79 different mental states of criminal culpability (e.g. "lasciviously", "wantonly", "corruptly"); some 80 different theft offenses, many illogically defined by the type of property stolen; a host of illogical penalties (e.g. making a false statement to a Government agency is punishable as an infraction or five years imprisonment depending upon which statute is used) and procedures often resulting in strikingly inequitable treatment of similarly-placed offenders. The inclusion of the jurisdictional basis within the description of the offense has often been the source of confusion (e.g. whether scienter is required with respect to the jurisdictional element). Obsolete provisions, such as prohibitions against interfering with Government carrier pigeons and seducing female passengers on ships, still exist. Some crimes have been rendered meaningless by judicial interpretation (e.g. the Smith Act, prohibiting advocating the overthrow of the government); others have never been used (e.g. the Logan Act, prohibiting private communication with a foreign government with intent to influence foreign policy). Current law has also generally failed to keep step with ever-expanding white-collar crime.

For many on Capital Hill the unfolding controversy will cover familiar ground. As long ago as 1966 Congress created a commission (headed by former California governor Edmund Brown) to consider criminal code reform. On only three prior occasions - in 1877, 1909, and 1948 - had Federal criminal law undergone major revision. The Commission's subsequent report was embodied in one of four bills introduced in the 93rd Congress (1972-73) and has remained, along with the Model Penal Code developed in 1962, an important source for current proposals. Over 8,000 pages of additional information was provided by the hearings of the Senate Judiciary Committee from 1971 to 1974.

But perhaps as important as this wealth of material for the tenor of recent debate has been the continuing legacy of the infamous "S.1" bill introduced in 1972. Drafted by the Justice Department during the law-and-order Nixon days, S.1 evoked immediate and widespread opposition by its various repressive measures, such as the provision allowing public officials accused of illegality to claim a defense of "national security" (dubbed the "Nuremburg" or "Ehrlichman" defense). S.1 died in committee but liberal critics had become sensitized to the potential abuses of reform. Thus, the reformulated S.1437 was introduced in the 95th Congress only to be castigated as "Son of S.1" by those claiming its improvements had not gone far enough.

Opposition from both ends of the political spectrum doomed S.1437 in the House. Conservatives viewed the bill's jurisdictional provisions as a dangerous encroachment upon traditional state police powers. Such sentiments found support by academicians such as Professor John L. Quigley of Ohio State University who called S.1437 "the sharpest break in the history of Federal-State relations since the New Deal" which would create a "tenfold increase in the number of federally prosecutable crimes." Liberals saw in a number of new offenses involving government process, such as "Failing to Obey a Public Safety Order", an alarming potential for prosecutorial abuse (this year's Senate bill deletes this offense). For many the 382-page bill was simply unmanageable and even the Washington Post (which supported passage) admitted, "It is almost impossible for anyone, other than the lawyers who have lived with it for a decade, to comprehend all of the changes this proposed code would make in federal criminal law." The House subcommittee, then headed by Rep. Mann of South Carolina, opted for an incremental approach and approved H.R. 13959, which made only relatively minor revisions and was never accepted by the full committee.

But if a consensus on code revision has been so far unobtainable, there are indications that passage may finally occur sometime in 1980. The Senate draft has been revised to accommodate some of last year's critics. For example, guidelines for the exercise of Federal jurisdiction have been added. The Senate bill is supported by the Justice Department and by such conservative members as Thurmond and Hatch, the latter of whom has called it "a neutral, technical revision" of which "at least 90 percent...is intended to perpetuate the present state of law." Rep. Drinan of Massachusetts has replaced Mann as chairman of the House Subcommittee on Criminal Justice and is committed to a compromise proposal. In a press conference in August he stated, "The Judiciary Committees of the House and Senate are in substantial agreement on the basic ingrediants of a criminal code."

Such signs do not mean that major issues do not remain. Philip Heymann, head of the Justice Department's Criminal Division, has criticized the House draft for undercutting law enforcement needs. The Village Voice devoted its cover story on October 29th to alleged deficiencies in the House bill's treatment of corporate crime. concluding that it seemed to "represent some misguided, purest sense of civil liberties" but is "significantly inferior" to the Senate draft in this area. (Some of the reasons the article cites include: the absence of reckless endangerment and consumer fraud offenses; shorter statutes of limitation for several white-collar crimes; no distinction between individual and corporate defendants for fining purposes; and no provision to permit the Government to appeal a sentence it believes to be too low, which could be significant in white-collar cases.)

The article attributes this blemish on Chairman Drinan's otherwise laudable liberal record to either the intensive lobbying effort of corporate groups such as the Business Roundtable (which somewhat ironically has coincided with the ACLU's lobbying efforts on code revision), or Drinan's failure to control the conservative members of his subcommittee. Naderite Mark Green agrees: "The Kennedy bill is preferable in terms of corporate sanctions."

If passage does occur next session, the Federal criminal code will follow codifications which have already been enacted in 35 states. House markup has been preceding since September 17th and full committee consideration is likely by the end of this month. Floor debate in both Houses may begin in January. A guide to particular similarities and differences between the two drafts follows. Significant changes between S.1722 and last year's Senate-passed version (S.1437) are also mentioned.

As introduced, the Senate version (S.1722) is the more comprehensive reform; the House bill (S.1723) is still in many respects a rough draft. Both bills: (1) replace the current cumbersome alphabetical listing of crimes with a logical scheme of nine subject areas (inchoate crimes, national defense, international affairs, government process, revenue, individual rights, the person, property, and general public order, safety, health, and welfare offenses); (2) separate the jurisdictional basis for Federal prosecution from the elements of an offense; (3) limit to four the mental states required to be proven with respect to criminal conduct - "intentional", "knowing", "reckless", and "negligent" (the Senate version narrows last year's definition of "reckless" by requiring that the risk disregarded be "substantial"); (4) replace the particularized penalties for individual offenses in current law with general penalty provisions based on five classes of felonies and three classes of misdemeanors; (5) create a new "determinate" sentencing structure providing appellate review of a sentence under certain circumstances; and (6) carry forward various current procedures and administrative provisions.

Jurisdiction The Senate bill provides that concurrent Federal jurisdiction is not generally preemptive of State or local jurisdiction, but authorizes the Attorney General to preempt specified violent crimes and offenses involving public office. Like its predecessor S.1437, it directs the AG to report annually to Congress on the extent of the exercise of Federal jurisdiction. A new provision has been added, however, specifying six general criteria which a Federal law enforcement officer should consider in determining whether to exercise jurisdiction (e.g. "the interests of federalism").

S.1723 does not expressly authorize concurrent jurisdiction. Unlike the Senate bill, it does make a prosecution by a State or local government (and a prior Federal prosecution) a bar to a subsequent Federal prosecution under certain circumstances.

Defenses and bars S. 1722 leaves defenses and bars to prosecution to be determined by the Federal courts in accordance with common law. The House bill sets forth statutory provisions for the bar of entrapment and the following defenses: insanity, intoxication, mistake or fact or law, protection of persons and property, duress, and reliance upon official misstatement.

Both bills provide for a general statute of limitations (under current law such bar varies with the particular offense). Both drafts set the limit at five years for a felony and one year for an infraction, but differ with respect to a misdemeanor (S.1722-five years; S.1723-two years).

Both bills revise the current law with respect to juvenile prosecution (the age of 16 bars prosecution of all offenses as an adult, and persons between the ages of 16 and 18 are treated as juveniles unless the offense is a felony punishable by ten or more years of imprisonment). The Senate version makes it a bar that the defendant was less than 16 years old, except with respect to the crimes of murder, maiming, aggravated battery, kidnapping, aircraft hijacking, and rape. S.1723 sets the bar at 18 years of age, but allows the court upon motion of the Attorney General to determine that the nonapplicability of such bar is in the interest of justice with respect to the offense of murder or a defendant who is at least 16 years old.

Inchoate crimes The Senate bill creates new general crimes of attempt and solicitation (but reduces the number of crimes to which solicitation applies from S.1437). The House version would repeal the current code provisions which include solicitation. Both drafts include the crime of conspiracy. The Senate bill codifies the "Pinkerton doctrine", making a coconspirator liable for the reasonably foreseeable criminal conduct of another person (Pinkerton v. U.S., 328 U.S. 640 (1946)). The House draft would essentially nullify this requirement by providing that a coconspirator must knowingly agree to engage in the criminal conduct with specific intent that the crime be committed.

New Offenses Both bills create the following new Federal crimes: (1) engaging in para-military activity for the purpose of taking over a Federal or State government agency; (2) speculating on official action or information (designed to punish the public servant who uses his office for pecuniary gain); (3) a series of offenses dealing with the electoral process, including the new crime of "obstructing a political campaign" (despite the obvious Federal interest, under current law there was Federal jurisdiction over the Watergate break-in only because it occurred in the District of Columbia); (4) trafficking in stolen property (aimed at the professional "fence" who deals in stolen goods); and (5) operating a racketeering syndicate.

In addition to attempt and solicitation, the Senate bill creates the following new Federal crimes which are not included in S.1723: (1) engaging in conduct which endangers the life of another; (2) restraint of a minor child by a parent or guardian in violation of any person's right to custody or visitation; and (3) consumer fraud (though the jurisdictional basis of this offense has been made much narrower than in its predecessor S.1437). The House draft adds the new crime of "Trafficking in counterfeit labels for sound recordings, motion pictures, and audiovisual works", not included in S.1722.

Civil libertarians were high critical of two offenses included in last year's Senate bill and retained in S.1722: "Obstructing a government function by physical interference." The House version this year includes only the latter crime and limits its scope to four circumstances which are prohibited under current law: obstruction of the service, attempt service, or execution of any authorized legal or judicial document; the performance of extradition duties; the performance of duties under a court order; and the passage of U.S. mail.

Revised Offenses Obscenity law provoked the most intense debate on the code bill in the Senate last session. Two major issue concern whether national or local community standards should be

Code: Almost a Reality

used in the prosecution of obscenity cases and where prosecution may occur. The Senate draft conforms the definition cases and where prosecution may occur. The Senate draft conforms the definition of, and standards for, obscenity with recent Supreme Court decisions. Thus, State or local community standards apply (Miller v. California, 413 U.S. 15 (1973)). The bill's venue provision limits prosecution of a conspiracy to disseminate obscene material to the district in which the conspiracy was entered into or in which a substantial portion of the conspiracy occurred (the general rule allows prosecution in any district in which any person acted in furtherance of the conspiracy). The House bill does not include a general obscenity law, though it does prohibit the transportation of minors in commerce for the purpose of prostitution or prohibited sexual conduct. The House draft thus essentially repeals the Mann Act. The Senate version continues a visage of this Act by prohibiting a "prostitution business", and this crime, unlike the present statute, applies equally to men and women.

With respect to sex offenses both drafts: (1) apply such crimes without distinction as to the sex of the offender or victim; (2) redefine "rape" to include additional acts (the House bill redesignates rape as "aggravated criminal sexual conduct"); (3) revise the offense of sexual assault to add the act of compelling a person to participate by threat or placing such person in fear; (4) make punishable the rape of one spouse by the other (but apply the interspousal exemption with respect to other sex offenses); (5) provide, with respect to the sexual abuse of a minor, that the victim must be less than 16 years old and at least five years younger than the offender (thus excluding sexual activity between peers), and add as a new affirmative defense that the actor reasonably believed the other person to be 16 years of age or older. S.1722 also expressly provides that corroboration of the victim's testimony with respect to these offenses is not required.

With respect to drug offenses, both bills: (1) provide for increased penalties for possession of 100 grams or more of an opiate; and (2) make possession of 30 gram (approximately one ounce) or less of marihuana an infraction (with maximum penalties under S.1722 of a $1,000 fine and five days imprisonment; under S.1723; $500 fine, no imprisonment). The Senate draft in addition imposes a mandatory two-year minimum sentence for trafficking in an opiate unless the court finds specified mitigating circumstances, eliminates the current provision allowing for a doubling of the penalty for repeat offenders, and adds a new expungement provision for possessing marihuana which requires the court to order expungement after payment of a fine in a case involving 30 grams or less.

With respect to civil rights, both S.1722 and S.1723: (1) include all "persons" (current law protects "citizens"; (2) allows for a single offender (current law requires a conspiracy); (3) eliminates the requirement that a defendant be found to have had specific intent to deprive the victim of his federally protected rights (Screws v. U.S., 325 U.S. 91 (1945)); and (4) prohibits discrimination based on sex (current law includes race, color, religion, or national origin).

With respect to "making a false statement", the Senate draft has revised last year's provision (a target of much liberal criticism) to require a "knowing" state of mind. The Senate version prohibits making a false written or oral statement to a law enforcement officer or person with non-criminal investigative authority; the House draft generally applies only to written statements.

Both bills consolidate and revise criminal contempt offenses to specify maximum penalties - S.1722, six months imprisonment and a discretionary fine; S.1723, five days imprisonment and a $500 fine - current law imposes no such limits. The House draft describes the offense as resistence to a "lawful" order; the Senate bill adds defenses based on the invalidity of the order, including if the order were "constitutionally invalid and constituted a prior restraint on the collection or dissemination of news."

Both versions limit the current crime of "impairing military effectiveness" to time of war or national defense emergency or where a major weapons system or means of defense is impaired.

With respect to national security crimes, the Senate bill carries forward existing law by cross referencing three current statutes: the Atomic Energy Act of 1954, the Espionage and Sabotage Act of 1954, and the Subversive Activities Control Act of 1950. The House draft is not final in this area and offers two alternatives: the first follows the Senate's approach; the second sets forth new provisions covering espionage and the dissemination of classified information which include: defenses that the actor reasonably believed he had authority to communicate the information or that the information had previously been published; a bar to prosecution that designation of the information as classified was an abuse of discretion; and an affirmative defense that the significance of the information for public debate outweighs any harm to national security.

Both bills repeal the Smith and Logan Acts, described above.

With respect to extortion, both bills adopt language which essentially overturns the Supreme Court's ruling in U.S. v. Enmons (410 U.S. 396 (1973)) that the Hobbs Act does not proscribe extortionate activities by employees or union officials in the course of a collective bargaining dispute where the objective of the extortion is to secure a benefit which legitimately could have been attained through bargaining. The Senate version stipulates a proof requirement that the pendency of a labor dispute does not constitute prima facie evidence that property was obtained by extortion.

Both drafts narrow the applicability of "riot offenses" by redefining "riot" as involving ten or more persons (three under current law) and requiring the actual occurrence of a riot (S.1722) or a substantial probability that a riot will occur (S.1723). The House version includes a narrow jurisdictional provision, while the Senate bill sets forth the expansive "interstate commerce" jurisdictional basis.

Both bills add as a new offense with respect to loansharking an extension of credit over $100 in value carrying an annual interest rate exceeding 45 percent (such a rate under current law only evidences extortionate credit).

With respect to tax evasion, the Senate bill changes existing law to allow a prosecution even where no tax is actually due. The House draft cross references to existing prohibitions under the Internal Revenue Code.

Sentencing Both bills make significant changes in current sentencing law. The Senate draft for the first time sets forth four basis purposes of sentencing: punishment, deterrence, protecting the public, and providing the defendant with needed training. The House bill includes these four plus two others: restitution to the victim, and reconciling the victim, the community, and the offender.

The Senate version provides three types of sentence for individuals - imprisonment, fine, or probation - and two types of sentence for organizations - fine or probation. The House bill also allows an individual to be sentenced to "conditional discharge" or "post-release supervision."

S.1722 creates a United States Sentencing Commission as an independant body in the judicial branch to promulgate guidelines and general policy statements for use by a sentencing court. The House bill directs the Judicial Conference to establish such guidelines and policy statements. The ACLU favors the Senate's 'independant' approach, though four of the Commission's seven members would be judges recommended to the President by the Judicial Conference. (Under last year's bill the Commission was to consist of just three judges.) The Senate bill specifies in greater detail the statutory requirements for the Commission's guidelines; for example, that the maximum of the range established for a term of imprisonment not exceed the minimum of such range by more than 25 percent.

Both drafts enumerate criteria which a judge must consider in imposing a sentence, including the purposes of sentencing, the applicable guidelines, and the nature and circumstances of the offense and the history and characteristics of the dependant. Both bills require a judge to state on the record the specific reasons for imposing a sentence which is inconsistent with the guidelines.

The Senate draft permits a defendant in any felony or class A misdemeanor case (unless contrary to a plea agreement) to appeal a sentence greater than the maximum allowed under the Commission's guidelines which are found by the sentencing court to be applicable, and permits the Government to appeal a sentence less than the applicable minimum. The Court of Appeals, upon a determination that the sentence is unreasonable, is authorized to impose a lesser sentence (where the defendant has appealed) or a greater sentence (where the Government has appealed). The House bill in any felony or mistemeanor case allows only the defendant to appeal a sentence, and then only if it is: unauthorized by law, the result of an erroneous application of the guidelines, or greater than the sentence called for by the guidelines. Unlike the Senate bill, S.1723 allows a defendant to petition for leave to appeal a sentence within the guidelines where a "substantial basis" for the unreasonableness of the sentence can be shown.

Neither bill provides for parole.

Both drafts set forth nine classes of offenses: five grades of felony (a to E), three grades of misdemeanor (A to C), and an infraction.

The Senate bill sets higher maximum fine levels than the House version and specifies a different set of fines if the defendant is an organization (up to $1,000,000 for a felony or misdemeanor resulting in loss of human life). The House bill has no such dual scale.

Miscellaneous Unlike last year's Senate bill, S.1722 does not attempt to conform non-title 18 offenses to the new provisions of the Act.

The Senate bill establishes a Victim Compensation Fund from which the victims of Federal offenses against the person or their surviving dependants may be compensated (up to $50,000 per victim per offense). The House bill has no such provision.

Both bills revise the procedures to be followed with respect to an offender suffering from mental incompetence. Both for the first time permit a defendant to be found not guilty by reason of insanity, and provide for the civil committment of such persons. The House version directs the Secretary of HEW to prescribe rules regarding the use of psychosurgery, electric shock treatment, and protracted use of psychotropic drugs on mentally incompetent defendants.

The Senate bill creates a new intake screening procedure for juveniles, by which a probation officer reviews the case and background and characteristics of the juvenile, and makes a recommendation to the Government attorney concerning the disposition of, or mode or proceeding with, the case. The House draft leaves generally unchanged current law regarding juvenile delinquency.

The Senate draft extends the criminal jurisdiction of U.S. magistrates to the trial of all misdemeanors. The House bill carries forward current law in this area.

Both drafts consolidate and enumerate the offenses for which the Attorney General may initiate civil forfeiture proceedings.

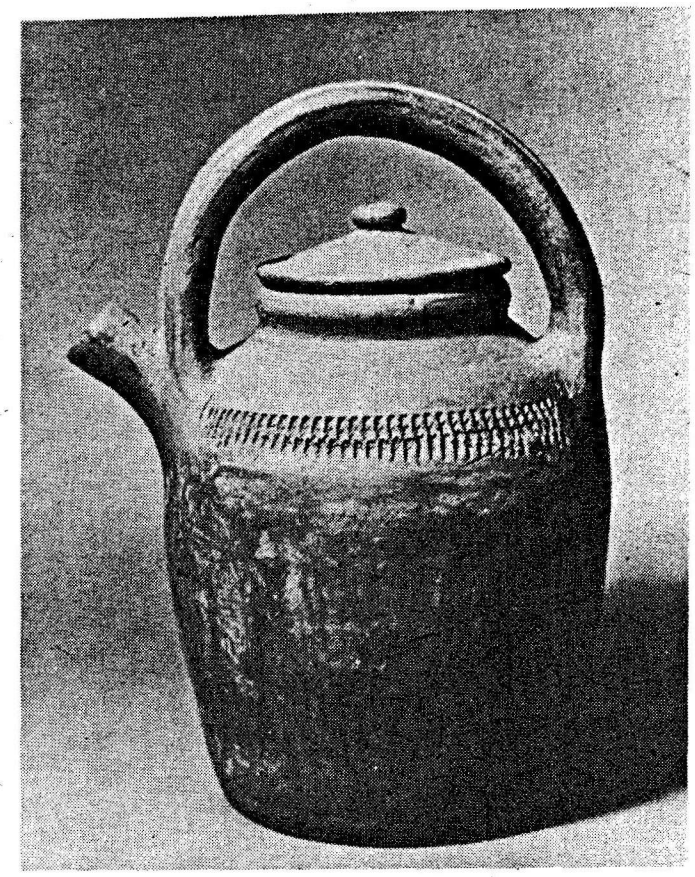
The Senate bill revises the reporting requirements with respect to special grand juries (for example, to eliminate the requirement that a report on noncriminal misconduct, malfeasance, or misfeasance in office be based upon "organized criminal activity"). The House bill carries forward current law in this area.

Afro-American Decorative Art at Smithsonian

by Joan Hodge

Picasso felt its vitality and captured it in his abstract art. Slave traders tried to stamp it out—and Europeans who settled the new American continent slowly absorbed certain elements into their culture. "The Afro-American Tradition in Decorative Arts," a new exhibition which opens at the National Museum of History and Technology on Oct. 18, vividly tells the story of the survival of African cultural traits and their crafts in America over the past 350 years.

Through 150 artifacts, the exhibit, which continues through Dec. 31, offers the nation an overview of the black artisans and craftsmen who steadfastly preserved their cultural roots despite strong opposition. They were brought largely from western Africa, according to maps in the exhibition, and located in the Caribbean, South America and along the south eastern coast of the United States. After 1900, the black population began to immigrate in large numbers to the west and north.



The African-Americans worked as potters, weavers, blacksmiths and basketmakers, making everyday goods for themselves and for the white Euro-American society. They were forced to leave behind all familiar material possessions and were forbidden in the new land to make physical objects that reflected their heritage. In time, African and European cultures intermingled in the new environment, resulting in a distinctive African-American tradition. The exhibition presents that tradition with objects in 9 decorative arts categories that include basketry, musical instruments, wood carving, quilting, pottery, boat building, blacksmithing, architecture and grave yard decoration.

Quilts in the exhibition reflect both African and European concepts of design and construction. Coiled baskets introduced by the Africans to winnow rice in the coastal regions of South Carolina and Georgia resemble baskets from Senegambia and Angola. Today that style of basketmaking survives, largely in Mt. Pleasant, S.C. at the northern end of the Sea Island chain. Boat building, as a centuries-old tradition in Africa and America, is described as evolving from the dug-out and log canoes. A full sized "batoe," used by South Carolina watermen today, is exhibited to show how the present plank construction consists f three sections as in the days when three logs were used. The blacksmithing exhibition shows the elegance and grace Afro-American iron workers brought to the mansions in Charleston, Savannah, Mobile and New Orleans during the 18th and 19th centuries. The window grills, gates and balcony ornaments were made from Anglo-German designs; however, the blacks passed their skills on to succeeding generations.

The exhibit was organized by the Cleveland Museum of Arts in cooperation with the Links of Cleveland, Inc. a black women's service organization, and supported by a grant from the National Endowment for the Humanities. The Washington, D.C. chapter of the Links, Inc. provided special support for the Washington exhibition. Through their generosity, educational aids for teachers and school children, special workshops, tours and a scholarly conference were developed by the museum's education department.

Coming Events

Nov. 15: Corporate Lecture: Ralph Ferrara: General Counsel Securities Exchange Corporation, "Ethical and Social Responsibilities of the Large Corporation" 1 P.M., Rm. 302 Stockton

Nov. 16: Faculty Meeting 2 P.M. Marvin 426 (open to all)

Nov. 19: Corporation Lecture: George MyronL: An Interventionist View of Government Regulations" 1 P.M. Room 302 Stockton

Nov. 30: SBA Meeting: Noon

GWU Orchestra Tomorrow Night

The George Washington University Orchestra, directed by George Steiner, presents its fall concert on Thursday, November 15, 1979 at 8:30 P.M. in the University's Lisner Auditorium at 21st and H Streets, Northwest.

The program is devoted completely to a variety of works, and features Mendelssohn's *Symphony No. 5.*

The complete program is as follows:
BEETHOVEN—"EGMONT" OVERTURE
LISZT—"ORPHEUS" TONE POEM
BERLIOZ—LOVE SCENE from "ROMEO AND JULIET"
BARTOK—THREE RUMANIAN FOLK DANCES
MENDELSSOHN—SYMPHONY NO. 5, "REFORMATION"

The concert is open to the public free of charge.

Custer Returns from the Grave

by Jim Sweeney, Arts Editor

Put General George Custer on a stage with his wife, his major critics and admirers, several soldiers and Indians, and what do you get? Robert Ingham's *Custer,* which Folger Theater Group is presenting at the Kennedy Center Terrace Theater (*not* the Folger) until November 18.

Aside from having a degree in playwrighting, Ingham also has one in history, and while at the University of Montana, he became fascinated with the Little Big Horn Battle, in which Custer and all of the men with him died. He read up on the subject, and found a man much more complex than the cardboard figure to which history and time often a person involved in a major event: Teddy Roosevelt is only remembered charging up San Juan Hill, John F. Kennedy only noted for the Cuban Missile crisis and being assassinated, and forth.

The end result was a play which, Ingham says, "was about four feet high and would have run three days." After paring it down considerably the result was the present play. The amount of research shows, as the play twists back and forth, with all involved giving heavily biased accounts of not only Little Big Horn but also Custer's career.

Historical speculation can be fun, and it's fascinating to see imaginary conversations between Custer and his rival Frederick William Benteen (John McMartin) *after* Little Big Horn. Benteen is a bitter, wry Southern aristocrat who constantly reminds everyone that he wasn't jealous of Custer, and constantly proves that he was. He comments at one point, when accused of being bitter: "Bitter? I don't know. I *was* disgusted."

Custer (Tom Blair) comes across as an overoptimistic overachiever, who constantly protests that he (or his public image) was a creation of the newspapers. One telling exchange between Custer and Benteen has them discussing tghe fame accorded to the victims of the battle (Benteen was in another part of the widespread battle), and Benteen's jealousy: Benteen: I'd never see the spring. Custer: But you'd be famous. Benteen: I'd rather see the spring.

Another intriguing character is Major Reno (William Newman), villified as a coward after the battle (he was in yet another part of the battle). An old rascal who recounts some of the incidents which got him into trouble in the Army, He says of the battle: "I never saw so many crazy, pissed-off Indians. A man deserves a bad day." And through most of the play. Benteen sits rooted in his chair, chin on one hand, pipe in another, glaring.

The only character who causes problems is Mrs. Custer (Sandy Faison). Despite hints that she was an ambitious political wife, trapped by traditional women's roles, and that she was difficult to get along with, the play never really gets inside her head, and she remains a mystery.

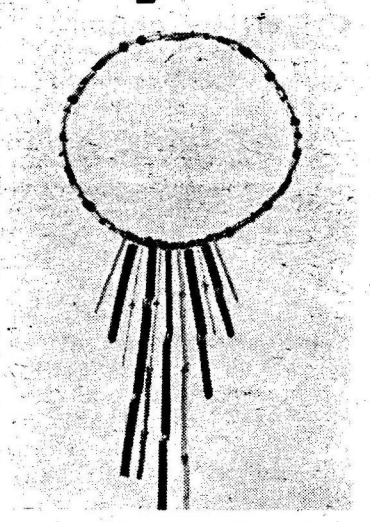
Ingham has combined fact and imagination into a fascinating examination of a little known yet famous event. Like the assassination probes recently conducted by Congress, it has no answer, just puzzling incongruities and bottomless questions.

Renwick Displays Brynner Jewelry

"Irena Brynner: Jewelry Since 1950" opens at the Renwick Gallery of the National Collection of Fine Arts, Smithsonian Institution, on September 28 and continues through January 13. This exhibition of 79 pieces of handwrought gold and silver jewelry includes chains, head ornaments, necklaces, rings, earrings, brooches and wedding bands.

Born in Russia to Swiss parents, Irena Brynner—who now lives in Geneva—worked in San Francisco and New York in the 1950s and 1960s. Her first pieces of jewelry, geometric in form, were simply constructed objects of wire and silver sheet. In the early 1950s, when she became known for her innovative techniques, she began to work in gold, creating a series of forged necklaces with precious stones. Later, she used the lost wax method to produce lacy forms, and her most recent work relies on casting and water welding.

Irena Brynner was a sculptor before she began to create jewelry, and her work reflects the relationship between the two art forms. "My jewelry to me is a sculptural expression, a sculpture done in relation to the human body," she explains. "It has to reflect the personality of the wearer . . . The jewelry should not be a mere decoration but become nearly an integral part of the wearer; dimension, rhythm, style, color of the metal and skin—all should have a perfect balance and harmony."



The Renwick Gallery is on Pennsylvania Avenue at 17th Street, NW—near the Farragut Metro stations—and is open every day of the week from 10 a.m. to 5:30 p.m. Admission is free.

Patent Perspective

continued from page two

working for a corporate patent division becomes an asset. The jobs and tasks associated with one of the positions gains familiarity and experience in Patent law which directly relates to what is required to pass the Patent Bar Examination. This is where the practical experience of working in and around the U.S. Patent and Trademark Office manifests into a tangible result.

In conclusion, the NLC patent program coupled with the accessibility to the U.S. Patent and Trademark Office and the ability to clerk for a patent firm or work for a corporate patent division affords the patent law student the best atmosphere to learn and experience patent law or in the broader sense, Intellectual Property.

Patent law is seemingly understood by only a small percentage of practicing attorneys. The students who can effect the law/technology interface are needed. This capacity conceptually sets patent law apart from other legal disciplines.

The NLC patent law student by use of this unique situation and judicial use of the assets at hand can graduate with skills far beyond their contemporaries in the field of Patent Law.

Capital Losses: The Name Says it All

by Jim Sweeney, Arts Editor

You can't understand how serious the architectural losses Washington will suffer in the near future are, unless you understand how serious the losses have already been. That is the point behind James Goode's *Capital Losses,* which has just been published by Smithsonian Press.

Goode, the curator of the original Smithsonian Building (the "Castle on the Mall"), spent his spare time (and some sabbatical leave) for the last five years on this project. The result is his research is a huge book which covers a broad range of lost buildings. The book was previewed by an exhibit of the same name at the American Institute of Architect's Octagon House.

Given the speed at which Washington's old buildings are torn down, Goode obviously had to pick and choose carefully. For further ease, he has broken down the examples into categories such as theaters, office buildings, houses (subdivided into architectural style/historical period), churches, and so forth.

Scattered through the text are 474 illustrations, some very familiar to anyone interested in Washington history, others rare views of little known buildings.

A book which simply listed the now demolished buildings in the city would be of scholarly value but not much interest to anyone else. Goode has wisely chosen to not only describe the structure but to tell some of the stories and history behind it. After a while, the Washington of an earlier period begins to come alive.

It is hard to imagine plantations in Washington, but many existed in 1800. One was Upper Giseborough, the grounds of which became the site of Bolling Air Force Base in Anacostia. It burned in 1888, while being sed as a dance hall.

The Duddington Mansion at 2nd and F Streets, S.E., was owned by Daniel Carroll of Duddington (there being at least six Daniel Carrolls in the 18th century, all from two prominent Maryland families, they added the names of their estates to avoid confusion). Carroll's first home projected seven feet over the proposed line of New Jersey Avenue, Major Pierre Charles L'Enfant, the city's cantankerous designer, ordered the walls knocked down (Carroll was reimbursed later, and built Duddington).

Carroll was one of Washington's first real estate speculators. Along with a few other cronies who owned land east of the Capitol, they expected the city to grow in that direction, and raised their prices accordingly. The land prices were so high that growth went west, and Carroll went bankrupt.

It's hard to imagine Georgetown as a slum, but for many years it was, and the area south of M Street has always been neglected. Of Henry Foxall, mayor of the then-independent city of Georgetown, Goode says that Thomas Jefferson used to visit him home "to play the violin in duets . . . and to perfect a new air-tight stove in the owner's workshop." He adds that "other close friends who were constant guests were John Quincy Adams, James Madison, James Monroe, Governor Morris, and close neighbor Francis Scott Key."

Two further items on Foxall are of interest. One is that an error in labeling street signs early in this century led to Foxhall Road being spelled with the "h" it has. The other is that Key's home was torn down for the ramp which connects Key Bridge and the Whitehurst Freeway.

One of the more interesting losses was Elias Caldwell's manor Norway, on upper 7th Street. Caldwell, the chief clerk of the Supreme Court during the first half of the 19th century, lost his home when it was destroyed during the Battle of Fort Stevens, when Confederate troops seized Silver Spring and attacked Washington in 1864.

Another Civil War loss was Kalorama manor, which was out in the country when it was built in 1807 at what is now 23rd and S Streets, N.W. Converted to a hospital during the Civil War, it burned as the result of a wild party which celebrated the end of the war. It was rebuilt, then bought by real estate developers who let the city tear it down to create S Street.

Two buildings of particular note to readers of this paper are in the book. One was the Columbian University (now GWU) Building at 15th and H, N.W. The university moved from its old campus near Columbia Road (named after the school) in 1882. Included in the building was a 500-seat lecture hall for the law school. The university moved again in 1910, to its current location.

Due to crowding the law school moved into a separate building on H Street in 1898. In 1921 the law school moved to the Palmer House (1435 K), staying until 1925. The next year Palmer House was demolished for the Rust Office Building. That in turn was demolished in 1978 for another ugly K Street office block.

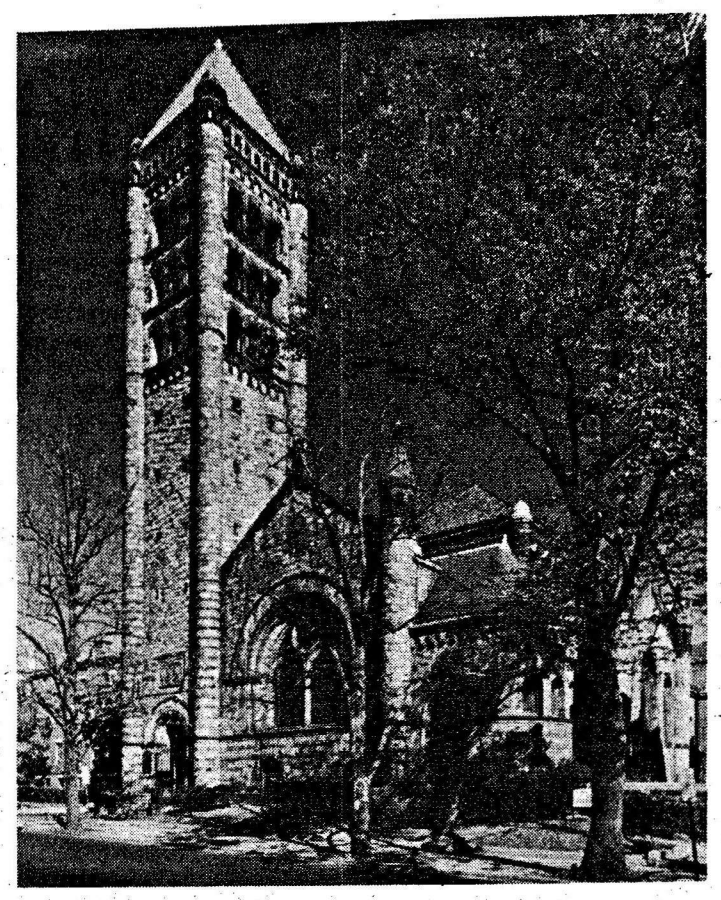
Certainly some of the demolitions mentioned in this book are not tragic or foolish. Nobody will fault the owners of the 1818 Willard Hotel for replacing it in 1900 with a (then) modern building. The Willard was an old and prestigious hotel (one fight over the terms of sale of the hotel went all the way to the Supreme Court). The new hotel closed in 1968, and has been saved and will reopen again in 1981.

Similarly, the loss of a lot of Washington's "street furniture" during World War II may be unfortunate, but the war years scrap metal drives would certainly be considered a worthy cause.

Some of the demolitions, however, are questionable. The National Education Association destroyed three important landmarks (the Guggenheim House, Williams House, and the Hotel Martinique) for their cracker box at 16th and M, NW.

The New York Avenue Presbyterian Church at 1313 New York Avenue, N.W., is still in the location it has occupied since 1859. But the church isn't; the congregation demolished its own church in 1950, replacing it with a larger replica.

The Church of the Covenant at Connecticut and N, N.W., is now gone, the only evidence of its existence a plaque on the side of the ugly building which replaced it in 1966. By then called the National Presbyterian Church, the leadership had bought Westover, the old Glover estate on Ward Circle, in 1959 as a new location. After demolishing the mansion, they sold the land, due to difficult terrain and rising land prices which allowed them to get enough money to buy their present site at Nebraska Avenue and Van Ness Street, N.W., close to Ward Circle.



What happened to Westover? It is now the site of the Foxhall condominium and the Westover townhouses. Virtually all of the trees on the estate, which even two years ago was heavily wooded, are now gone.

Mount Vernon Row, at 10th and K, N.W., was a group of nine Victorian rowhouses built in 1873. They were demolished over a period of time from 1940 to 1969—for parking lots and more buildings for Mount Vernon Place Methodist Church.

Phillips' Row, at 1302-1314 Connecticut Avenue, N.W., was built in 1878, and demolished in 1948. It is now the parking lot next to the Dupont Circle Building.

The Elks Club at 919 H Street, N.W., will soon be demolished (if it hasn't already) for the Convention Center (a project of dubious value to the city, which is being done mostly for political reasons),

Capital Losses goes on and on in this vein; only a small portion of its scope can be mentioned here. Goode not only provides the architectural data and intriguing anecdotes about a building, but the details of its demise. Too often it turns out that a historic or still useful or even just aesthetically plleasing building was demolished for a parking lot or an ugly office block.

The growth of any city involves change, and that includes tearing some buildings down. However, wholesale demolition of neighborhoods is not necessary. Few who had never seen it would believe that K Street was, not too long ago, lined with large trees and big houses. Now, what few small trees have been planted are dying from air pollution, and K Street is synonymous with ugly office buildings.

The argument that zoning height restrictions have created these monstrosities, due to the necessity of filling up lot space, is invalid. If it weren't for Washington's height restrictions, it would soon lool like Rosslyn across the Potomac River, and real estate developers' profits can't be the only consideration in zoning.

Ironically, nobody seems to care about these buildings until they're gone. Or if they do, it's only when a neighborhood becomes fashionable and the current residents are eficted for condo conversions and restoration.

In the last two decades many of Washington's historic buildings have fallen. Washington can't always stay the same, or it will end up an architectural mausoleum like Williamsburg. There is also the very real question of the needs of the present and future; obviously some buildings are going to have to be sacrificed, and not everybody agrees on which ones. Which periods do you save, or emphasize? Victorian? Federal? Civil War? Nobody knows.

When the Federal Triangle was built in the 1930s, the Old Post Office was the only building in the area left from earlier times. For years people demanded that it be destroyed, because it clashed with the neoclassical government buildings. Now neoclassicisms is out of style, and the Old Post Office is considered worth saving.

The large old movie palaces of the 1930s and 1940s have been torn down at an astonishing rate. Yet now, with the advent of the blockbuster movie, these are the only theaters that are suitable. Most of Washington's are gone, and many of the few that remain will be demolished or are deteriorating rapidly.

Congress wanted the Norman revival Smithsonian Castle destroyed at the turn of the century, because it was out of line with the rest of the buildings on the Mall and wasn't neoclassical. The fact must have spurred Goode in his work on this book, for he is the Castle's curator.

(Capital Losses sells for $37.50, and is available from Smithsonian Institution Press, the Smithsonian Bookstores, and area bookstores. Smithsonian Associates, and those who shop at Crown Books, get it for $30.00.)

In Between the Sheets

by Jim Heller

Q. Jim, for two years you hadn't missed publishing a "Sheets" column in the ADVOCATE. What happened last issue?

A. .....

Q. Geez... this is like National Lampoon's interview with Dan Blocker in 1973.

A. .....

Q. Jim, I have got a copy of Congressional Quarterly's August 4 issue. On page 1604, they refer to a Presidential message to Congress wherein Carter wanted to revitalize the maritime industry by a variety of means, one of them being a plan to relax the antitrust restrictions on shipowners. CQ says the message was transmitted by letter to Congress, and that its date was July 23. I need a copy of that letter.

A. *The Weekly Compilation of Presidential Documents* (located on the Mezzanine), contains presidential statements, messages, etc. It does not contain executive orders or proclamations. If we go to the appropriate Weekly Comp., we might find the letter there. It's always best to look in the materials not only for the given date, but a week or so on either side of the given date, in case there was an error.

Q. There is no mention of this letter. What's next?

A. Let's go to the *Congressional Record.*

Q. I already looked there, and could find nothing. What about CIS?

A. Presidential messages containing proposed legislation are often published as House or Senate Documents, so this one could be in CIS. It is pretty recent however, and I have doubts if CIS will pick it up this soon.

Q. It is not there — what do we do now?

A. Now we make use of our D.C. location. Let's call the White House Information Center and see if they have information concerning the letter. (After a call to the White House Information Center, and two transfer of calls, our search is still fruitless. They have no indication that such a document exists. At this point, patron has put her head under the large paper-cutter, and is pleading that the pain incurred from this agonizing search be ended. After convincing her that there are more important things in life than Jimmy Carter's letters (hearing the Nighthawks live, for example), I tell her that there is one more chance).

Q. Please release me, release me from the pain and suffering of legal research.

A. Hold on, Mrs. Dorsey, there is one other source. The C.Q. article states: "Members of the House Merchant Marine Committee have sniped at Carter ..." Perhaps someone from that Committee will be able to help us.

Q. You have been a fool to cling to this question for so long. Arnold George would have given up long ago.

A. To end this search would bring me pain. The *Congressional Directory* tells us that John Murphy is the Committee Chairman. Let's contact someone from the Committee who can help us. The *Congressional Yellow Book* is the source to use, since it gives a detailed listing of Committee staff members and their phone numbers. The phone number for the majority Chief-of-Staff is unlisted. Let's try Jack Sands, the Chief Minority Counsel. The Yellow Book, put out by Washington Monitor, is updated quarterly, so the name and number should be accurate. (Conversation ensues) Mr. Sands said he'll send us a copy of the letter. It should come by Wednesday.

Q. Thanks a lot, Jim. Legal research sure is fun.

Q. I need to see tentative proposed rules modifying the Federal Rules of Civil Procedure. What do I do?

A. The Federal Rules, believe it or not, emanate from the U.S. Supreme Court. The Chief Justice transmits proposed rules to Congress, and, unless Congress vetoes them within a short period of time, they are enacted. The proposed rules plus the Advisory Committee notes are printed as a House Document.

Q. Will they be in CIS then?

A. By the time they are in CIS they will already have been enacted. Are the rules you want in force yet?

Q. No, I'm sure they're not.

A. In that case, let's try to contact the Federal Judicial Center. Perhaps they can help us. (Conversation ensues) They said to contact the Administrative Offices of the U.S. Courts. (Second phone conversation) These folks say a tentative draft of the proposed rules was written in February, and that's the most recent item available at this time. While not disseminated nationally, you can go over to 811 Vermont Avenue and get a copy.

Q. Thanks, that's exactly the item I need.

Q. How can I get articles concerning the medical effects of airport noise pollution. I've looked in the *Index to Legal Periodicals*, and while there are some articles on airport noise, none concern the medical viewpoint.

A. The Medical School Library has a publication called *Index Medicus* which indexes medical literature from the U.S. and abroad. I believe you would find quite a few articles under the subject heading "Aircraft." *Index Medicus* is a monthly publication, and seems to be quite comprehensive in scope.

It Has Been Decided...

by David Bane and Chris Brandtner

UNCLEAN HANDS DOCTRINE — BEHIND THE GREEN DOOR

After viewing the film, "Behind the Green Door," the district court found it obscene, applied the unclean hands doctrine, and denied relief to the copyright owner in their infringement suit. The United States Court of Appeals, Fifth Circuit disagreed with the decision of the lower court to allow the obscenity claim as a defense. The unclean hands doctrine is not applicable because the alleged wrongful conduct does not change the equitable relationships between the injured and the alleged infringers.

CA 5, *MITCHELL BROTHERS FILM GROUP v. CINEMA ADULT THEATER* 10/16/79 *48 LW 2292*

INS SEARCH BLACKIES

The Immigration and Naturalization Service obtained a warrant allowing it to enter Blackie's House of Beef Inc. during daylight hours and make a search for illegal aliens. Ten INS officers executed the warrant and removed 14 allegedly deportable aliens from the kitchen and utility areas of the restaurant.

The court ruled that the search conducted by the I.N.S. violated the restaurants Fourth Amendant rights. The warrant failed to identify with sufficient particularity the allegedly deportable persons in the restaurant. The warrant was also defective because it did not reflect consideration by the magistrate of the reasonableness of the search in regard to avoiding or minimizing the intrusiveness of a search and seizure on the premises during business hours.

The warrant attempted to confer a blanket authority to search the premises and seize the persons who appeared to the officers to be illegal aliens. In addition, the warrant failed to indicate whether the persons sought were patrons or employees.

U.S.D.C., D.C., *BLACKIE'S HOUSE OF BEEF, INCORPORATED v. CASLITTO,* 10/3/79, 48 L.W. 2289

CHILDREN

New York unwed mothers involved in child custody disputes with unwed fathers no longer have presumptive right to custody.

The natural father of an illegitimate child seeks custody of his seven-year-old son, who has lived with the mother since birth. Until recently, the courts have maintained two distinct standards in determining custody cases depending upon whether the child was born in or out of wedlock. Even though 70% of the New York Domestic Relations Law provides that there shall be "no prima facie right to the custody of the child in either parent" and that a custody award shall be made solely on the basis of a best interest determination, case law has developed a doctrine that the mother shall have a prima facie right to custody of a child born out of wedlock. But judicial thinking has not shifted. In *Caban v Mohammed*, the U.S. Supreme Court held that an adjudicated natural father who had established a significant parental relationship with his child must be afforded the same right given a marital father regarding the adoption of his child. Caban involved the natural father's right to withhold his consent to the child's adoption and thereby prevent its occurrence in the absence of any statutory grounds for either terminating his parental rights of dispensing with consent. In light of Caban, this court finds that affording an unwed mother a presumptive right to custody of her illegitimate child is no longer a tenable judicial position.

Since the mother enjoys no automatic presumption of a right to custody, custody will be based on a determination of the child's best interests.

New York, FAMILY COURT, BRONX CITY, *IN Re DOMINGO T.,* 9/14/79

FEDERAL LAW FORBIDS CREDIT BIAS AGAINST UNMARRIED COUPLE

Cohabitation of an unmarried man and woman may still be unlawful in a number of states, but a lender may not rely on it to deny a couple a mortgage loan. The U.S. Court of Appeals of the District of Columbia Circuit says that the Equal Credit Opportunity Act, which bans discrimination against credit applicants on the basis of sex or marital status, forbids a lender's refusal, in determining creditworthiness, to aggregate the incomes of an unmarried couple who jointly apply for a mortgage loadn.

The court first rejects the contention that married credit applicants afford creditors greater rights and remedies than are available against unmarried applicants, thus excusing the lender under a provision of the Act that allows lenders to consider "state property laws" that affect creditworthiness. A lender has no greater rights against married loan applicants than it would have had if, while unmarried, they applied for a loan jointly. Thus, the Act itself does not authorize a lender's refusal to aggregate an unmarried couple's income in determining creditworthiness.

In fact, the court says, the refusal to aggregate incomes solely because of an unmarried couple's marital status is precisely the sort of discrimination prohibited by the Act. And because the meaning of the Act is clear from its language, the court declines to examine the legislative history to determine congressional intent. Accordingly, a lender's failure to treat an unmarried couple applying for credit jointly the same as it would have treated them had they been married is unlawful.

MARKAM v. COLONIAL MORTGAGE SERVICE COMPANY, ASSOC., INC., 8/2/79

WIFE STEALING

A man sued his best friend for seducing his wife, requesting $1 million in damages. A Superior Court jury awarded the jilted husband $80,000.00 after finding that the defendant Sidney H. Robinson, a building contractor, had had "criminal conversations" with the wife, Lila Zarella. In his instruction to the jury, Judge Ronald R. Lagueex, defined "criminal conversation" as violation of a spouse's right to "exclusive privileges of physical intercourse." The successful plaintiff, Gerald R. Zarella said that this case will help protect the family structure in America.

PROVIDENCE, RHODE ISLAND, *WASHINGTON POST,* OCTOBER 24, 1979, pg. 15